IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.763 OF 2000

IN

SUMMONS FOR JUDGMENT NO.939 OF 1998

IN

SUMMARY SUIT NO.3796 OF 1998

...

Gujarat Park Hotels Ltd. ...Appellant

v/s.

Suman Resorts India Ltd. ...Respondent

...

Mr.Satish Shetye i/b M.S. Bodhanwala & Co. for the Appellant.

Mr.K.H.Mody i/b Vinod Mistry & Co. for the Respondent.

...

CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.
DATED: 8TH AUGUST, 2007

P.C.:

1. By this appeal the Appellant who is the original Defendant in a summary suit challenges the order passed by the learned single Judge dated 25th July, 2000 in summons for judgment No.939 of 1998.

2. We have heard the learned counsel for both sides. The learned single Judge has granted conditional leave to the defendant to defend the suit. The condition is to deposit an amount of Rs.3 lakh in the court. Perusal of the order of the learned single Judge shows that the learned single Judge has found that both sides have filed suit and counter suit against each other. The learned single Judge has also recorded a finding that " The Defendants have no doubt raised certain triable issues in the present suit". In our opinion, after recording this finding

it was not appropriate for the learned single Judge to impose any condition for grant of leave to defend. Leave to defend can be denied or a condition can be imposed if it is found by the court that virtually there is no defence to offer or the defence offered by the Defendant is a moon shine defence. After recording a finding that the Defendant has raised a triable issue, in our opinion, conditional leave could not have been granted. Appeal is, therefore, allowed. Summons for judgment No.939 of 1998 taken out by the Plaintiff is disposed of. Defendant is granted unconditional leave to defend the suit. Defendant to file his written statement within a period of two weeks from today.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2664 OF 2000

IN

APPEAL NO.763 OF 2000

IN

SUMMONS FOR JUDGMENT NO.939 OF 1998

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Respondent.

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CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 8TH AUGUST, 2007

P.C.:

In view of the order passed in Appeal, disposing of the Appeal, motion does not survive for consideration. Disposed of as such.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)